

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Pittsylvania County Schools	)	File No. SLD-117260
Chatham, Virginia	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER****Adopted: October 31, 2003****Released: November 3, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this Order, the Telecommunications Access Policy Division grants the request of Pittsylvania County Schools, Chatham, Virginia (Pittsylvania), for a waiver of the September 30, 2000 deadline for installation of non-recurring services for schools and libraries receiving universal service funding for Funding Year 1999 of the program.<sup>1</sup> Specifically, we find that Pittsylvania is entitled to a waiver of section 54.507(d) of the Commission's rules, which requires recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services by September 30 following the close of the funding year.<sup>2</sup> We extend the deadline for implementation of non-recurring services for Funding Request Number (FRN) 260055 to September 30, 2004, for Pittsylvania, who was, through no fault of its own, unable to complete installation of non-recurring services by September 30, 2000.

2. Pittsylvania requests an extension of the non-recurring service installation deadline for FRN 260055.<sup>3</sup> In its Request for Waiver, Pittsylvania indicates that its service provider was unable to complete installation due to delays with the manufacturer.<sup>4</sup> Pittsylvania also indicates that the network design for the funding request has been reengineered.<sup>5</sup>

3. Pursuant to section 54.507(d) of the Commission's rules, schools and libraries are

<sup>1</sup> Letter from Rickey W. Parker, Pittsylvania County School District, to Federal Communications Commission, filed December 20, 2000 (Request for Waiver).

<sup>2</sup> See 47 C.F.R. § 54.507(d).

<sup>3</sup> Request for Waiver.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

required to implement non-recurring services by September 30, following the close of the funding year.<sup>6</sup> In November 2000, the Wireline Competition Bureau (formerly known as the Common Carrier Bureau) issued an Order that extended the Funding Year 1999 deadline for implementation of non-recurring services for eligible schools and libraries applying for universal service support who were unable, through no fault of their own, to complete installation of non-recurring services by the deadline.<sup>7</sup> Applicants were required to submit documentation to the Administrator prior to the expiration of the September 30, 2000 deadline requesting relief on the grounds that the service provider was unable to deliver the services due to events beyond the service provider's control, such as labor walk-outs or natural disasters.<sup>8</sup>

4. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>9</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>10</sup> Waiver is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>11</sup>

5. We conclude that special circumstances exist to justify a waiver of section 54.507(d) of the Commission's rules. Moreover, we find that it would be consistent with the public interest to grant Pennsylvania's request and thus extend the deadline for installation of Funding Year 2000 non-recurring services for FRN 260055 to September 30, 2004. This is consistent with the Commission's finding in the *Non-Recurring Services Order* that external circumstances can create situations where deadlines are both impractical and unreasonable, as

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<sup>6</sup> See 47 C.F.R. § 54.507(d); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 13510, 13512-13515 (2001) (*Non-Recurring Services Order*). We note that before adoption of this rule, the non-recurring services deadline for Funding Year 1999 was extended from June 30, 2000 to September 30, 2000 by Order of the Commission. See *Fifth Reconsideration Order*, 13 FCC Rcd at 14916, para. 1, and 14920, para. 8, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 8064 (Com. Car. Bur. 2000) (*May 2000 Extension Order*).

<sup>7</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 21875 (Com. Car. Bur. 2000) (*November 2000 Extension Order*). Specifically, the deadline was extended to September 30, 2001 for those applicants: (1) whose Year Two funding commitment letters were issued by the Universal Service Administrative Company on or after April 4, 2000; (2) who received service provider change authorizations or service substitution authorizations from the Administrator on or after April 4, 2000; (3) whose service providers were unable to complete implementation for reasons beyond the service provider's control; or (4) who had their funding disbursements delayed while the Administrator investigated their applications for program compliance. In addition, on December 27, 2000, the Bureau issued an Order that granted a limited waiver of the Commission's competitive bidding requirements for the universal service support mechanism for eligible schools and libraries with existing contracts for non-recurring services. See *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 00-2900 (Com. Car. Bur., rel. December 27, 2000) (*December 2000 Order*). See also *May 2000 Extension Order*, 15 FCC Rcd at 8068, para. 8; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983, 5991-94, paras. 17-23 (1999); 47 C.F.R. § 54.504(a).

<sup>8</sup> See *November 2000 Extension Order*, 15 FCC Rcd at 21878-21879.

<sup>9</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>10</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

<sup>11</sup> *WAIT Radio*, 418 F.2d at 1159.

well as the Commission's and the Bureau's long-standing policy of ensuring that applicants for non-recurring services are not penalized for delays that are not within their control.<sup>12</sup>

6. Pittsylvania's service provider was unable to complete installation by September 30, 2000 due to manufacturing delays, and as a result, there was insufficient time before the installation deadline for it to complete implementation of non-recurring services. Pittsylvania requested an extension on December 20, 2000 and submitted documentation regarding the delay.<sup>13</sup> Although Pittsylvania did not meet the exact criteria outlined in the *November 2000 Extension Order*, we believe it would be consistent with the reasoning set forth in the Order to extend the deadline for Pittsylvania. In the *November 2000 Extension Order*, the Bureau noted that there may be situations beyond those described in which it may be consistent with the public interest to extend this deadline.<sup>14</sup> Pittsylvania, due to manufacturing delays outside of its service provider's control, did not complete its work prior to September 30, 2000. We believe that the public interest would be served if Pittsylvania had additional time to receive delivery and implement non-recurring services. Accordingly, we extend to September 30, 2004 the deadline by which Pittsylvania must install its non-recurring services.

7. We also grant a limited waiver of the Commission's competitive bidding rules. Pittsylvania may extend their existing contracts for non-recurring services for FRN 260055 voluntarily until September 30, 2004, without having to comply with the Commission's competitive bidding process.

8. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 U.S.C. §§ 0.91, 0.291, 1.3, and 54.722(a) that the request for waiver of section 54.507(d) of the Commission's rules, 47 C.F.R. § 54.507(d), filed by Pittsylvania County Schools, Chatham, Virginia on December 20, 2000, IS GRANTED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

<sup>12</sup> *Non-Recurring Services Order*, 16 FCC Rcd at 13512, para 11. See also *Request for Waiver of the September 30, 2000 Deadline for Implementation of Non-Recurring Services by Baldwin County Board of Education, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 7053 (Com. Car. Bur. 2001).

<sup>13</sup> See Request for Waiver

<sup>14</sup> See *November 2000 Extension Order*, 15 FCC Rcd at 21877-21878